

APPEAL NO. 031836  
FILED SEPTEMBER 3, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 12, 2003. The hearing officer decided that the appellant (claimant herein) was not entitled to supplemental income benefits (SIBs) for the third quarter. The claimant appeals, contending that he was under treatment during the qualifying period for the third quarter and had not been released to work until the respondent's (self-insured herein) doctor released him. The claimant also argues that the self-insured falsified records as to when the claimant actually received notification of this release to return to work. The self-insured responds that the evidence supported the finding by the hearing officer that the claimant failed to make a good faith effort to seek employment during the qualifying period for the third quarter and the decision of the hearing officer that the claimant was not entitled to SIBs for the third quarter.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Section 408.142(a)(4) states that one requirement for SIBs eligibility is that the claimant attempt in good faith to obtain employment commensurate with the claimant's ability to work. The claimant must meet this criterion whether or not the claimant is still under medical care. Texas Workers' Compensation Commission Appeal No. 94063, decided February 22, 1994; Texas Workers' Compensation Commission Appeal No. 012167, decided October 11, 2001. Nor is it required that the claimant receive notice of a release to return to work to trigger this requirement. We pointed out as follows in Texas Workers' Compensation Commission Appeal No. 010782, decided May 30, 2001.

In adopting the SIBs no-ability-to-work provision (formerly numbered as [Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(3) (Rule 130.102(d)(3))], the Texas Workers' Compensation Commission (Commission) considered a comment that inquired whether an injured employee's obligation to look for work should only begin when the injured employee has notice of a release to return to work, and in response to that comment the Commission noted, among other things, that nothing in the proposed rules addresses notice to an injured employee regarding a release to return to work, that the ability to work is something that can exist with or without medical records and is ultimately a decision of the finder of fact in the event of a dispute, and that the provision "is tied to the ability to work and not any 'notice' requirement." 24 Tex. Reg. 406 (1999).

Whether a claimant satisfied the good faith requirement for SIBs entitlement is a factual question for the hearing officer to resolve. Texas Workers' Compensation

Commission Appeal No. 94150, decided March 22, 1994. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). As an appellate tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The evidence was conflicting and applying the standard of review stated above, we find no legal basis to overturn the decision of the hearing officer.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS COUNCIL RISK MANAGEMENT** and the name and address of its registered agent for service of process is

**FRANCIS FAYE  
9229 WATERFORD CENTRE BOULEVARD, SUITE 100  
AUSTIN, TEXAS 78758.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Robert W. Potts  
Appeals Judge